



March 28, 2003

ENGROSSED HOUSE BILL No. 1260

DIGEST OF HB 1260 (Updated March 26, 2003 10:55 AM - DI 106)

Citations Affected: IC 35-38; IC 35-50.

Synopsis: Withholding judgment of conviction. Allows a court to withhold judgment of conviction for a Class D felony under certain circumstances.

Effective: July 1, 2003.

Avery, Weinzapfel, Young D, Thompson

(SENATE SPONSORS — LONG, BRODEN)

January 13, 2003, read first time and referred to Committee on Courts and Criminal Code.
February 6, 2003, amended, reported — Do Pass.
February 10, 2003, read second time, amended, ordered engrossed.
February 11, 2003, engrossed.
February 13, 2003, read third time, passed. Yeas 92, nays 0.

SENATE ACTION

February 24, 2003, read first time and referred to Committee on Judiciary.
March 27, 2003, amended, reported favorably — Do Pass.

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EH 1260—LS 7404/DI 105+



March 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1260

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) **Except as**
3 **provided in section 1.5 of this chapter**, after a verdict, finding, or plea
4 of guilty, if a new trial is not granted, the court shall enter a judgment
5 of conviction.
6 (b) When the court pronounces the sentence, the court shall advise
7 the person that the person is sentenced for not less than the earliest
8 release date and for not more than the maximum possible release date.
9 SECTION 2. IC 35-38-1-1.5 IS ADDED TO THE INDIANA CODE
10 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2003]: Sec. 1.5. (a) **A court may withhold judgment of conviction**
12 **for not more than three (3) years for a person who pleads guilty to**
13 **a Class D felony that qualifies for consideration as a Class A**
14 **misdemeanor under IC 35-50-2-7 if the following conditions are**
15 **met:**
16 (1) **The prosecuting attorney consents.**
17 (2) **The person agrees to the conditions set by the court.**

EH 1260—LS 7404/DI 105+



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(b) Notwithstanding any other law, a person for whom judgment is withheld under this section shall be sentenced as provided in this chapter and, in all other respects, as if judgment of conviction were entered by the court.

(c) For a judgment of conviction to be withheld under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(d) The court, after a hearing, may enter judgment of conviction as a Class D felony if:

(1) the person violates a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

(e) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(f) The withholding of a judgment of conviction under this section does not affect the application of the license suspension requirements of IC 9-30-5-10.

(g) For purposes of IC 9-30-5-10, the court shall recommend the suspension of a person's license at the time the court accepts the person's guilty plea.

(h) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.

SECTION 3. IC 35-50-2-7, AS AMENDED BY P.L.188-1999, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of one and one-half (1 1/2) years, with not more than one and one-half (1 1/2) years added for aggravating circumstances or not more than one (1) year subtracted for mitigating circumstances. In addition, he may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A

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1 misdemeanor; and
 2 (B) the prior felony was committed less than three (3) years
 3 before the second felony was committed;
 4 (2) the offense is domestic battery as a Class D felony under
 5 IC 35-42-2-1.3; **or**
 6 (3) the offense is ~~auto theft (IC 35-43-4-2.5);~~ **or possession of**
 7 **child pornography (IC 35-42-4-4(c)).**
 8 ~~(4) the offense is receiving stolen auto parts (IC 35-43-4-2.5).~~
 9 The court shall enter in the record, in detail, the reason for its action
 10 whenever it exercises the power to enter judgment of conviction of a
 11 Class A misdemeanor granted in this subsection.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1260, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, after line 3, begin a new paragraph and insert:

"SECTION 3. IC 35-38-2.5-5.5, AS ADDED BY P.L.137-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5.5. (a) A court may not place an offender who resides in a different county on home detention unless:

- (1) the offender is eligible for home detention in the county in which the person resides; and
- (2) supervision of the offender will be conducted by the probation department or community corrections program located in the county in which the offender resides.

However, if the offender resides in a county that is contiguous to the sentencing court, the sentencing court may place the offender on home detention under the supervision of the probation department or community corrections program located in the county of the sentencing court.

(b) If an offender is:

- (1) currently serving home detention in a county that operates a home detention program; and
- (2) being supervised by a probation department or community corrections program located in a different county;

the court shall order that supervision of the offender be transferred to the probation department or community corrections program located in the county where the offender resides. **However, if the offender is currently serving home detention in a county that is contiguous to the sentencing court, the sentencing court may place the offender on home detention under the supervision of the probation department or community corrections program located in the county of the sentencing court.**

(c) All home detention fees described in section 8 of this chapter shall be collected by the probation department or community corrections program that supervises the offender."

and when so amended that said bill do pass.

(Reference is to HB 1260 as introduced.)

WEINZAPFEL, Chair

Committee Vote: yeas 13, nays 0.

EH 1260—LS 7404/DI 105+



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HOUSE MOTION

Mr. Speaker: I move that House Bill 1260 be amended to read as follows:

Page 2, after line 33, begin a new paragraph and insert:

"(d) If a court under this section orders supervision of an offender who resides in a county that is contiguous to the county of the sentencing court by the probation department or community corrections program in the county of the sentencing court, the supervising probation department or community corrections program is solely responsible for the expenses of supervision."

(Reference is to HB 1260 as printed February 7, 2003.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1260, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, after "a" insert **"person who pleads guilty to a"**.

Page 1, line 13, after "35-50-2-7" delete "." and insert **"if the following conditions are met:**

(1) The prosecuting attorney consents.

(2) The person agrees to the conditions set by the court."

Page 2, line 1, after "(c)" insert **"For a judgment of conviction to be withheld under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).**

(d) The court, after a hearing, may enter judgment of conviction as a Class D felony if:

(1) the person violates a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

(e) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(f) The withholding of a judgment of conviction under this section does not affect the application of the license suspension requirements of IC 9-30-5-10.

(g) For purposes of IC 9-30-5-10, the court shall recommend the suspension of a person's license at the time the court accepts the person's guilty plea.

(h)".

Page 2, delete lines 4 through 39, begin a new paragraph and insert: "SECTION 3. IC 35-50-2-7, AS AMENDED BY P.L.188-1999, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of one and one-half (1 1/2) years, with not more than one and one-half (1 1/2) years added for aggravating circumstances or not more than one (1) year subtracted for mitigating circumstances. In addition, he may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class

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A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; **or**

(3) the offense is ~~auto theft (IC 35-43-4-2.5)~~; **or possession of child pornography (IC 35-42-4-4(c)).**

~~(4) the offense is receiving stolen auto parts (IC 35-43-4-2.5).~~

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1260 as reprinted February 11, 2003.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 2.

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